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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 SUET WONG,

8 Plaintiff(s),

9 v.

10 COUNTRYWIDE HOME LOANS, INC.,
11 et al.,

12 Defendant(s).

Case No. 2:18-CV-1273 JCM (CWH)

ORDER

13
14 Presently before the court is defendant Fay Servicing, LLC's ("Fay") motion to dismiss.
15 (ECF No. 6). Plaintiff Suet Wong ("plaintiff") filed a response (ECF No. 14), to which Fay replied
16 (ECF No. 15).

17 Also before the court is defendants Bank of America, NA ("BANA") and Countrywide
18 Home Loans, Inc.'s ("Countrywide") motion to dismiss. (ECF No. 10). Plaintiff filed a late
19 response (ECF No. 21).

20 Lastly before the court is BANA and Countrywide's motion to strike plaintiff's late
21 response. (ECF No. 22). Plaintiff has not filed a response, and the time to do so has passed.

22 **I. Facts**

23 This action is plaintiff's sixth in a successive string of lawsuits before the United States
24 District Court regarding the allegedly "invalid lien" ("deed of trust") on the property located at
25 5402 Night Swim Lane, Las Vegas, Nevada 89113 ("the property").¹

26
27 ¹ See *Suet Wong v. BAC Home Loans, et al.* 2:11-01608-GMN-CWH (D. Nev. Oct. 11,
28 2012); *Suet Wong v. Citi Home Loans Servicing, LP, et al.* 2:11-cv-01428-ECR-GWF (D. Nev.
May 23, 2012); *Suet Wong v. Bank of America Home Loans, N.A., et al.* 2:13-cv-01438-JCM-
CWH (D. Nev. April 1, 2014); *Suet Wong v. Countrywide Home Loans, Inc., et al.* 2:15-cv-01398-

1 Plaintiff's complaint alleges the following, in relevant part:

2 In 2003, plaintiff "obtained a new first mortgage from [Countrywide] refinancing the
3 existing first mortgage in the amount of \$106,000 . . . The [deed of trust] by Countrywide was
4 incomplete and contains only the first four pages and legal descriptions . . . This deed of trust was
5 prepared by Matthew T. Gantt at the top and Countrywide shows this was prepared by the lender,
6 and not a mistake of [p]laintiff." (ECF No. 1 at 2). Accordingly, plaintiff alleges that the deed of
7 trust is defective and cannot be used to foreclose on the property. *Id.* at 3.

8 In light of the foregoing facts, plaintiff initiated this lawsuit against defendants, *pro se*, on
9 July 12, 2018, alleging two purported claims for (1) "invalid lien," and (2) "breach of good faith
10 and fair dealing in resolving issues." (ECF No. 1).

11 The court now considers defendants' motions to dismiss plaintiff's claims against them.

12 **II. Legal Standard**

13 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief
14 can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and
15 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2);
16 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
17 factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the
18 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

19 "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550
20 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
21 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation
22 omitted).

23 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
24 when considering motions to dismiss. First, the court must accept as true all well-pled factual
25 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
26 *Id.* at 678-79. Mere recitals of the elements of a cause of action, supported only by conclusory
27 statements, do not suffice. *Id.*

28

JCM-VCF (D. Nev. Feb. 23, 2016); *Suet Wong v. Countrywide Home Loans, Inc., et al.*, 2:16-cv-
01012-JCM-CWH (D. Nev. Jan. 9, 2017).

1 Second, the court must consider whether the factual allegations in the complaint allege a
2 plausible claim for relief. *Id.* at 679. A claim is facially plausible when plaintiff's complaint
3 alleges facts that allow the court to draw a reasonable inference that defendant is liable for the
4 alleged misconduct. *Id.* at 678.

5 Where the complaint does not permit the court to infer more than the mere possibility of
6 misconduct, the complaint has "alleged – but it has not shown – that the pleader is entitled to
7 relief." *Id.* at 679. When the allegations in a complaint have not crossed the line from conceivable
8 to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

9 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
10 1216 (9th Cir. 2011). The *Starr* court held,

11 First, to be entitled to the presumption of truth, allegations in a complaint or
12 counterclaim may not simply recite the elements of a cause of action, but must
13 contain sufficient allegations of underlying facts to give fair notice and to enable
14 the opposing party to defend itself effectively. Second, the factual allegations that
15 are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

16 *Id.*

17 **III. Discussion**

18 As a preliminary matter, the court takes judicial notice of the recorded deed of trust at issue
19 in this case, which the court may do without converting defendants' motions to dismiss into
20 motions for summary judgment. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.
21 1986). *See* (ECF No. 9-4). The deed of trust has been made part of the record in this case by
22 BANA and Countrywide. *Id.*

23 The court agrees with defendants that plaintiff's complaint must be dismissed for failure to
24 state a claim upon which relief may be granted. Indeed, "invalid lien" is not a cause of action in
25 the State of Nevada. Even construing plaintiff's claims liberally, the facts as alleged by plaintiff
26 neither state the non-existent claim of "invalid lien," nor do they state a valid claim for any other
27 cause of action. *See* (ECF No. 1).

1 Moreover, plaintiff's allegations do not satisfy the elements of a cause of action for breach
2 of the implied covenants of good faith and fair dealing. *Id.* Under Nevada law, to establish a claim
3 for breach of the implied covenants of good faith and fair dealing, a plaintiff must prove: "(1) the
4 existence of a contract between the parties; (2) that defendant
5 breached its duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of
6 the contract; and (3) the plaintiff's justified expectations under the contract were denied." *Shaw v.*
7 *CitiMortgage, Inc.*, 201 F.Supp.3d 1222, 1251 (D. Nev. 2016).

8 Here, plaintiff fails to allege that defendants breached their duties of good faith. *See* (ECF
9 No. 1). Rather, plaintiff states in a conclusory fashion that the deed of trust on the property is
10 invalid, and that their "misrepresentation" has caused plaintiff "to be in default of the [deed of
11 trust]." *Id.* Such conclusory statements are insufficient to support plaintiff's claim. *Iqbal*, 556
12 U.S. at 678–79.

13 Indeed, plaintiff's assertion that the deed of trust "was incomplete and contains only the
14 first four pages and legal descriptions" is patently false. The deed of trust is a 16-page document
15 containing all the typical provisions of a standard deed of trust. (ECF No. 9-4). Moreover,
16 plaintiff's initials appear in the bottom-right corner of fifteen (15) of the sixteen (16) pages. *Id.*
17 Therefore, the sole grounds upon which plaintiff claims the deed of trust is invalid is without merit
18 and cannot support her purported causes of action.

19 Accordingly, the court finds that plaintiff's complaint fails to state any claim upon which
20 relief can be granted. Therefore, defendants' motions to dismiss are granted. Finally, the court
21 will deny as moot BANA and Countrywide's motion to strike.

22 **IV. Conclusion**

23 Accordingly,

24 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Fay's motion to dismiss
25 (ECF No. 6) be, and the same hereby is, GRANTED.

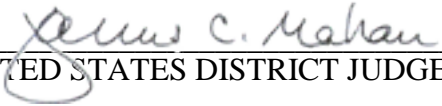
26 IT IS FURTHER ORDERED that BANA and Countrywide's motion to dismiss (ECF No.
27 10) be, and the same hereby is, GRANTED.

1 IT IS FURTHER ORDERED that BANA and Countrywide's motion to strike (ECF No.
2 22) be, and the same hereby is, DENIED as moot.

3 IT IS FURTHER ORDERED that plaintiff's complaint (ECF No. 1) be, and the same
4 hereby is, DISMISSED.

5 The clerk of court is instructed to enter judgment accordingly and close the case.

6 DATED February 27, 2019.

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UNITED STATES DISTRICT JUDGE